IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8690 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

KANTILAL ISHWARBHAI PATEL

Appearance:

1. Special Civil Application No. 8690 of 2003

MR HARDIK C RAWAL for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

MR NIRDOSH H RATHOD for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 01/08/2003

ORAL JUDGEMENT

#. Rule. Mr.Rathod waives service of rule for the

respondent. With the consent of the parties, the matter is taken up for final hearing today.

#. By filing this petition, the petitioner Corporation has challenged an award passed by the Labour Court, Kalol dated 10.10.2002 passed in Reference, being Reference (LCK) No.335 of 1996. By the aforesaid award, the Labour Court has partly allowed the Reference in favour of the respondent workman. The Labour Court has held that the order of the Corporation removing the petitioner is illegal. However, the Labour Court has not passed any order of reinstatement since the concerned workman has retired reaching the age of superannuation. The Labour Court, ultimately, passed the order granting full back wages and other retiral dues in favour of the concerned workman. The back wages are given for the period from 20.12.1994 to 30.8.1997, i.e. upto the date on which the concerned workman has retired reaching the age of superannuation.

#. The respondent workman was serving as a Driver. The departmental inquiry was initiated against the concerned workman, as, he remained unauthorised absent for the period of about 10 days, i.e. from 22.7.1994 to 31.7.1994. After concluding the inquiry, the respondent workman was removed from service and ultimately, the workman raised the aforesaid industrial dispute. The Labour Court, after appreciating the evidence on record, came to the conclusion that during the intervening period, the concerned workman because of his illness could not remain present for which the certificate issued by the Civil Surgeon was also taken into consideration. Considering the aforesaid case, the Labour Court, after exercising the powers under Section 11-A of the Industrial Disputes Act ("the Act" for short), passed the impugned order.

#. Mr.Raval for the Corporation submitted that, even during the inquiry proceedings, the workman had not remained present and he had not produced documentary evidence about his sickness. He, therefore, submitted that, at least, some punishment order was required to be inflicted upon him by the Labour Court while exercising the powers under Section 11-A of the Act.

#. Mr.Rathod, on the other hand, submitted that, because of sickness, the workman could not remain present. He submitted that, even the medical certificate was produced before the Labour Court. He, however, conceded that, in the facts and circumstances of the case, some punishment is required to be inflicted, as, the workman to some

extent remained negligent by not participating in the departmental inquiry as well as by not resuming the duty even after the aforesaid period of absence.

#. I have heard the learned advocates for both the sides.

#. Considering the fact that the concerned workman has already retired reaching the age of superannuation and considering the nature of the charge as well as considering the fact that the concerned workman did produce the medical certificate before the Labour Court, in my view, the order of the Labour Court by which the respondent is given the benefit of continuity of service till his superannuation is not required to be interfered with. However, when the Labour Court has exercised its powers under Section 11-A of the Act, at least, some punishment was required to be inflicted upon the concerned workman. Under these circumstances, the concerned workman shall be subjected to the punishment of withholding of one increment with future effect and in the facts and circumstances of the case, he will be only entitled to 40% back wages for the intervening period instead of full back wages awarded by the Labour Court. The order of the Labour Court is modified to the aforesaid extent. Whatever amount is required to be paid as per this order, including the retiral dues, may be paid within a period of one month from today.

The petition is partly allowed. Rule is made absolute to the extent indicated above, with no order as to costs.

(P.B.Majmudar,J)
(pathan)